IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 4220 of 2005

Date of decision: 25.09.2006.

Birbal

..... Petitioner.

Versus

State of Haryana State

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Parminder Singh, Advocate
for the appellant.

P.S. PATWALIA, J. (ORAL)

The present regular second appeal has been filed by the plaintiff against concurrent findings recorded by the trial Court and the lower Appellate Court.

The appellant- plaintiff had filed a suit claiming benefit of military service rendered by him during the proclamation of national Emergency. He had also challenged orders by which minor penalties were imposed upon him.

In reply, the State took a stand that the benefit of military service had already been granted to the plaintiff vide order dated

05.03.1992. In so far as the orders imposing minor penalties, it was stated that notice was issued to the plaintiff, the plaintiff had filed reply stating that he did not want to face inquiry and whatever decision was taken by the department, would be binding upon him. As a result of this, vide order dated 14.05.1999 a recovery of Rs.1000/- was ordered from the plaintiff, vide order dated 17.05.1999 recovery of Rs.900/- was ordered and by orders dated 14.05.1999 and 17.05.1999 and a subsequent order, period of absence was treated as leave without pay. Still further by order dated 21.05.1999 two increments of plaintiff were stopped with cumulative effect and vide order dated 31.03.1995, one increment of the plaintiff was stopped without future effect. In all these orders proper show cause notices were issued to the plaintiff. Except in the case of the order dated 31.03.1995, the plaintiff filed reply saying that he did not want to face inquiry and whatever decision is taken by the department, the same would be binding upon him. In the case of order dated 31.03.1995, no reply was sent by the plaintiff. Consequently the trial Court found no infirmity in the procedure followed before passing the aforementioned orders.

In so far as the order dated 14.05.1999 regarding stoppage of two increments with cumulative effect, is concerned, the trial court has found that a charge sheet was served upon the plaintiff but again the plaintiff gave in writing that he did not want to face any enquiry and decision whatever passed would be binding upon him. Yet an inquiry was conducted and after considering the inquiry report and repesentation given by the plaintiff, the matter was ultimately decided and two increments of the plaintiff were stopped with cumulative effect.

In view of this, the trial Court declined to interfere with the orders imposing these penalties. The aforementioned findings have been affirmed by the lower Appellate Court.

I find no error in the view taken by the Courts below. On going through the evidence on record, I find that a proper opportunity was granted to the plaintiff before passing impugned orders. Therefore I concur with the findings recorded by the Courts below that they suffer from no legal infirmity.

Leaned counsel for the appellant argues that an observation has been made by the lower appellate Court that plaintiff had mixed up various causes of action in one suit by challenging seven orders in the same suit. He therefore, prays that he should be permitted to withdraw the suit to file fresh suits challenging the orders separately. I find that the veracity of the orders has already been examined by the Courts below. Even the lower appellate court has gone into the matter and concluded that the orders do not suffer from any infirmity. Therefore, I do not find any ground to permit the plaintiff to withdraw the suit at this stage to file fresh suits on the same cause of action. Since I am also convinced that there is no violation of the principles of natural justice before passing the impugned orders, I am of the opinion that it would not be fair to the plaintiff to make him go through fresh litigation at this stage when he has already retired in 1999.

In view of the aforementioned facts, I find no error in the orders passed by the courts below, the same is accordingly dismissed.

September 25, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**